
Chapter 3 Specific Justice Systems and Victims' Rights

Section 3, Federal Justice

Abstract

Since the passage of the Victim and Witness Protection Act of 1982, there has been considerable emphasis placed on the implementation of victims' rights and provision of quality victim services at the federal level. The *2005 Attorney General Guidelines for Victim and Witness Assistance*, as well as the passage of major federal laws affecting victims, define the scope of victims' rights and services for victims of federal crimes. Efforts at the federal level to coordinate the delivery of services to victims have produced collaborative initiatives that improve victims' rights and services.

Learning Objectives

Upon completion of this section, students will understand the following concepts:

- Major laws affecting federal victims of crime.
- The *2005 Attorney General Guidelines for Victim and Witness Assistance*.
- The Office for Victims of Crime response to coordinate services and assistance to federal crime victims.
- The availability and coordination of victims' rights and services at the federal level.
- Significant federal initiatives that have strengthened victims' rights and services at the federal level.

Statistical Overview

- U.S. attorneys opened matters for investigation against 130,078 suspects during 2003. The number of investigations initiated by U.S. attorneys increased by 5% over 2002. Forty-five percent were investigated for public-order offenses such as regulatory (4%), immigration (16%), and weapons (11%) offenses; less than a third (29%) were investigated for drug offenses; 21% for property offenses; and 4% for violent offenses such as murder, rape, assault, and robbery. (BJS October 2005)
- Of the 128,518 suspects in matters concluded during 2003, 74% were referred for prosecution either before a U.S. district court judge (62%) or a U.S. magistrate (12%). Nearly all (94%) of those investigated for immigration offenses were referred for prosecution. (Ibid.)
- During 2003, criminal cases were commenced against 92,085 defendants in U.S. district court. Most (87%) were charged with a felony offense. Thirty-eight percent of felony defendants were charged with a drug offense; 33% of all defendants were charged with a public-order offense -- including 17% with an immigration offense and 11% with a weapons offense. Seventeen percent were charged with a property offense. (Ibid.)

- Cases were terminated against 85,106 defendants during 2003. Most (89%) defendants were convicted. Of the 75,805 defendants convicted, 72,589 (or 96%) pleaded guilty or no-contest. (Ibid)

Comparing Federal and State prison inmates,

- In 1997, Federal inmates were more likely than State inmates to be
 - Women (7% vs. 6%)
 - Hispanic (27% vs. 17%)
 - Age 45 or older (24% vs. 13%)
 - With some college education (18% vs. 11%)
 - Non-citizens (18% vs. 5%) (BJS August 2006)

In 2000, an estimated 57% of Federal inmates and 21% of State inmates were serving a sentence for a drug offense; about 10% of Federal inmates and 49% of State inmates were in prison for a violent offense. (Ibid)

- Violent offenders accounted for 53% of the growth in State prisons between 1990 to 2000, drug offenders accounted for 59% of the growth in Federal prisons. (Ibid)

Introduction

Federal and nonfederal courts co-exist in separate, yet highly related judicial systems. The United States is a Federal Republic of generally autonomous states. Article X of the Constitution specifies that "[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Thus, the powers not expressly given to the United States government are retained by the states and the people. In the criminal justice system, there is federal criminal jurisdiction for all crimes set forth in the U.S. Criminal Code including:

- Crimes occurring on federal land, e.g., Indian Reservations or National Parks.
- Crimes including an interstate component, e.g., kidnapping, postal service, telephone lines, or Internet.
- Crimes involving a specific connection to the federal government, e.g., counterfeiting, robbery of a federally insured bank, embezzlement of federal funds, or aviation matter (FAA).

Federal crimes are prosecuted in one of the ninety-four United States Attorneys' Offices throughout the United States, Guam, Puerto Rico and the Virgin Islands. Each United States Attorney's Office has a victim-witness coordinator who can provide information to victims of federal crime or serve as a resource regarding the federal criminal justice system.

Major Federal Laws Affecting Federal Crime Victims

Six significant laws affecting federal victims of crime have been enacted in the past two decades:

- The Victim and Witness Protection Act of 1982.
- The Victims of Crime Act of 1984.
- The Crime Control Act of 1990.
- The Violent Crime Control and Law Enforcement Act of 1994.
- The Mandatory Victims Restitution Act of 1996.
- The Victims' Rights Clarification Act of 1997.

THE VICTIM AND WITNESS PROTECTION ACT OF 1982

The Victim and Witness Protection Act of 1982 (VWPA) was enacted "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the federal government does all that is possible within the limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendants; and to provide a model for legislation for state and local governments" (*AG Guidelines* 1983).

The VWPA was considered landmark legislation in 1982 because, for the first time, rights for victims of federal crimes were established, including:

- The fair treatment of victims and witnesses in the federal criminal justice system.
- The right to include victim impact statements in pre-sentence investigation reports.
- New criminal penalties to protect victims and witnesses from intimidation, harassment, and retaliation, including provisions for civil restraining orders.
- Restitution for victims.
- Consideration of victims' interests in bail decisions.

Procedures for responding to the needs of crime victims in the federal criminal justice system, including referral services, information and notification services, consultation services, restitution, and victim impact statements were further delineated in *Guidelines for Victim and Witness Assistance* issued by the Attorney General in 1984.

THE VICTIMS OF CRIME ACT OF 1984

Two years following the passage of the VWPA, Congress enacted the Victims of Crime Act of 1984 (VOCA) to provide funding for victim assistance, victim compensation, and training and technical assistance for victim service providers across the nation. VOCA's innovative funding mechanism relies on fines, penalties, and bond forfeitures from convicted federal offenders--not taxpayers--to generate an annual Crime Victims Fund. Congress directed the Office for

Victims of Crime (OVC) to distribute the funding to states and U.S. Territories to assist in expanding compensation and assistance to crime victims nationwide.

While the majority of VOCA funding is distributed to states and territories through formula grants, a small portion of the fund is available for federal crime victims, as well as for training and technical assistance in the federal arena and at the national level.

OVC has utilized this funding for significant federal crime victim assistance including:

- The creation of the Federal Crime Victim Assistance Fund.
- Assistance to Native American crime victims.
- Training and technical assistance for all areas of the federal system, including military victim assistance training and U.S. Attorney Victim-Witness Coordinator training.

One very important provision in VOCA is the requirement that in order for state compensation programs to receive federal Crime Victims Fund awards, victims of federal crimes *must* be eligible for state compensation benefits. Following the enactment of VOCA, many state legislatures amended their state laws to include federal crime victims as eligible claimants. Today, victims of federal crimes in all states are eligible to file compensation claims to the state compensation program where the crime occurred.

THE CRIME CONTROL ACT OF 1990

The Crime Control Act of 1990 contained a wealth of new legislation and amendments to the existing federal criminal code affecting the treatment of crime victims, including children.

- Title V, the Victims' Rights and Restitution Act of 1990, in effect, created a Federal Crime Victims' Bill of Rights and codified services that should be available to victims.
- Title II, the Victims of Child Abuse Act of 1990, contained extensive amendments to the federal rules of criminal procedure affecting the treatment of child victims and witnesses in the federal system, e.g. allowing the use of closed-circuit television and videotaped depositions of children.
- Title XXXI, Bankruptcy and Restitution, protected victims by preventing drunk driving offenders from discharging debts arising from offenses under Chapter 13 of the bankruptcy code.

Provisions of the Crime Control Act created a new framework for comprehensive victim assistance on the federal level by specifying new, or clarifying previous, responsibilities of federal officials with respect to implementing victims' rights. Federal officials covered under the Crime Control Act include officials of the U.S.

Department of Justice and other federal agencies engaged in the detection, investigation, or prosecution of crime.

Federal Crime Victims' Bill of Rights. The enactment of a Federal Crime Victims' Bill of Rights was historic and paralleled legislative activity in the states. Section 502 of the Act mandated that federal officials . . .

shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) . . .

1. The right to be treated with fairness and with respect for the victim's dignity and privacy.
2. The right to be reasonably protected from the accused offender.
3. The right to be notified of court proceedings.
4. The right to be present at all court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
5. The right to confer with the attorney for the Government in the case.
6. The right to restitution.
7. The right to information about the conviction, sentencing, imprisonment, and release of the offender (42 U.S.C. Section 10606(b)).

The Attorney General revised the *1983 Guidelines for Victim and Witness Assistance* and re-issued them to "provide definitive guidance on implementation of the 1990 Act as well as continued guidance on the protection of witnesses under the VWPA" (*AG Guidelines* 1991). In addition, many of the approximately seventy-five federal law enforcement agencies that operate within federal agencies (e.g. Inspectors General, Postal Inspectors, Bureau of Indian Affairs Law Enforcement, etc.) took steps to issue guidelines for the treatment of victims and witnesses.

Critical changes. While many outstanding Victim-Witness Programs had been created in United States Attorneys' Offices across the country by 1990, and some federal agencies had responded to implement the Victim and Witness Protection Act (e.g., the Federal Bureau of Prisons' victim notification and restitution programs), the fact that Congress created strong new language "demonstrates the continuing national concern for the innocent victims of *all* crimes and reflects the view that the needs and interests of victims and witnesses had not received appropriate consideration in the federal criminal justice system under the Victim and Witness Protection Act" (*AG Guidelines* 1991).

The *1983 AG Guidelines*, stemming from the passage of the VWPA, required that services to victims and witnesses be provided "whenever possible" and "within limits of available resources." With the passage of the Crime Control Act in 1990, victims' rights and services on the federal level gained new status and it was clearly stated in law, and in the revised *1991 AG Guidelines*, that victims' rights and services "shall be provided."

THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

Four years later, Congress enacted comprehensive crime legislation entitled the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act). In addition to the establishment of new victims' rights, and the passage of the historic Violence Against Women Act contained within, the Crime Act encouraged the federal government to form partnerships with state and local communities. The specific rights and services contained in the 1994 Crime Act include:

- Notice and payment for testing and counseling for sexually transmitted diseases for sexual assault victims.
- The right of a domestic violence victim to be heard at a pre-release hearing of the defendant.
- Allocution at sentencing for victims of crimes of violence and sexual abuse.
- Mandatory restitution for the following victims:
 - Domestic violence.
 - Sexual assault.
 - Sexually-exploited and other abused children.
 - Telemarketing fraud victims.

THE MANDATORY VICTIMS RESTITUTION ACT OF 1996

The Mandatory Victims Restitution Act of 1996 amends the federal criminal code to require judges to order mandatory restitution for victims of violent crime, certain property offenses, fraud, and consumer product tampering.

Restitution may now be granted to victims that are not victims of the specific offense resulting in conviction provided that the parties agree to that in the plea agreement. In addition, procedures for issuing and enforcing restitution orders were significantly expanded under the Act. Full implementation of these new provisions will bring new importance to restitution in federal criminal proceedings.

THE VICTIMS' RIGHTS CLARIFICATION ACT OF 1997

This Act expands the rights of victims to attend and observe trial, stating that victims shall not be excluded from the trial of the defendant because the victim may, during the sentencing hearing, make a statement or present any information in relation to the sentence. This right is further expanded in Capital cases to deny exclusion in cases where the victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim's family.

There has been additional significant legislation since 1997 regarding Victim Issues. This legislation has continued to shape the Federal response to victims and to revise *the Attorney General Guidelines* as the laws have been enacted.

THE VIOLENCE AGAINST WOMEN ACT OF 2000

The reauthorization of the Violence Against Women Act of 2000 (VAWA 2000) extended the funding of key VAWA programs set to expire at the end of the fiscal year 2000. On October 28, 2000 President Clinton signed into law VAWA 2000 as Division B of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law No: 106-386). The new legislation seeks primarily to improve current methods of addressing violence against women and expand existing programs. It seeks to build on the success of the first act rather than introduce new and sweeping reforms (Heger 2001). VAWA 2000 substantially increases support for sexual violence programs and coalitions. Among new programs tailored to assist underserved populations and new areas of concern are the inclusions of dating violence in several VAWA programs, greater protection for battered immigrant women, programs addressing violence against older and disabled individuals, and pilot programs for transitional housing and supervised visitation centers (NCVC 2001).

THE BATTERED IMMIGRANT WOMEN PROTECTION ACT OF 2000

The Battered Immigrant Women Protection Act of 2000 improves access for battered immigrants to a variety of legal protections provided by VAWA, and sets out procedures for spouses and children to self-petition under VAWA:

- It offers greater protection to spouses of citizens or residents who practice bigamy by clearly defining their status and providing them with the right to self-petition under VAWA provisions.
- It provides access to VAWA self-petitions to battered immigrants living abroad who are abused by their permanent resident or citizen spouses or parents if they are government employees or members of the U.S. uniformed services.
- It allows battered immigrants to file VAWA self-petitions within two years of divorce or death of the abuser. If immigration status of the abuser is lost due to incidents of domestic violence the battered immigrant may self-petition.
- It offers clarifications regarding the possibility of naturalization or citizenship of battered immigrant women and protection from deportation when the battered immigrant has left the home of the abuser after being subject to battery or extreme cruelty.
- It clarifies the use of VAWA funds to provide legal and social services to battered immigrant women.
- It creates a non-immigrant visa for immigrant crime victims who have suffered substantial physical or emotional injury as a result of being subjected to crimes such as rape, torture, trafficking, incest, domestic

violence, female genital mutilation, or kidnap (NOW Legal Defense Fund Oct 2000).

(The description of the following legislation is excerpted from a summary report published online by the Violence Against Women Office at the U.S. Department of Justice.)

VICTIMS OF TRAFFICKING AND VIOLENCE PREVENTION ACT OF 2000

Division A: Trafficking Victims Protection Act of 2000 combats trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, through prevention, prosecution, and enforcement against traffickers, and protection and assistance for victims. The Act:

- Requires the Secretary of State to include in the annual Country Reports on Human Rights Practices information on the nature and extent of trafficking and efforts to combat trafficking.
- Requires the President to establish an Interagency Task Force to Monitor and Combat Trafficking and authorizes the establishment of an Office to Monitor and Combat Trafficking.
- Charges the President with establishing prevention initiatives to enhance economic opportunities for trafficking victims.
- Requires the Department of State and the U.S. Agency for International Development to establish programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement of victims of trafficking.
- Directs the Attorney General, the Secretary of Labor, and heads of other federal agencies to expand their benefits and services to "victims of severe forms of trafficking" in the United States, regardless of the victims' immigration status.
- Authorizes the Attorney General to make grants to state, tribal governments, local governments, and nonprofits to develop, expand, or strengthen services for victims of trafficking.
- Requires the Secretary of State and the Attorney General to promulgate regulations to ensure that victims of trafficking are provided with appropriate shelter while in federal custody and with necessary medical care, assistance, and protection; that victims have access to information about their rights and translation services; that victims are assured continuous presence in the United States to assist in the prosecution of traffickers; and that State and Justice Department personnel are trained in identifying and protecting victims of trafficking.
- Creates a new, nonimmigrant "T" visa for certain "victims of severe forms of trafficking" who either have complied with any reasonable request for assistance in the investigation or prosecution of trafficking or have not yet turned fifteen years old.

- In cases of countries that fail to comply with the Act's minimum standards for the elimination of trafficking and fail to make significant efforts to comply with such standards, the President is required (at his discretion) to withhold no humanitarian U.S. foreign assistance.
- Increases the penalties for slavery and trafficking crimes and creates a new crime of forced labor that captures slavery-like practices that do not meet the elements of the involuntary servitude statute as interpreted by the Supreme Court. The bill also criminalizes trafficking for the purpose of involuntary servitude or forced labor and sex trafficking of children or by force, fraud, or coercion. Finally, it punishes the withholding or destruction of immigration or identification documents for the purpose of preventing a trafficking victim from escaping.
- Provides for mandatory restitution for trafficking victims and for asset forfeiture and witness protection in trafficking cases (P.L. 106-386).

Division B: Violence Against Women Act (VAWA) of 2000 provides for direct compensation from the federal government to victims of international terrorism to be augmented in 2000 through Sections 2002-2004 of VAWA 2000.

Provisions of the Victims of Crime Act were rewritten to authorize the Office for Victims of Crime (OVC) to make supplemental grants to states, victim service organizations, and public agencies to provide emergency relief to victims of terrorist acts or mass violence occurring outside the United States who are persons not eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L.101-222).

Victim of terrorism was further defined to mean a person who is a national of the United States or an officer or employee of the U.S. government who is injured or killed as a result of a terrorist act or mass violence occurring outside the United States.

The cap on the emergency reserve fund was increased and the fund is placed at the Director of OVC's discretion. The Director of OVC is authorized to use the emergency reserve to carry out a program to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with the victimization.

VAWA 2000 further improves legal tools and programs addressing domestic violence, sexual assault, and stalking. VAWA 2000 reauthorizes critical grant programs created by the original Violence Against Women Act and subsequent legislation, establishes new programs, and strengthens federal laws. VAWA 2000:

- Defines "dating violence" and adds "dating violence" to several of the purpose areas under various VAWA grant programs.

- Increases the set aside for tribes in Indian Country under VAWA grants that address domestic violence and child abuse.
- Reauthorizes grants and establishes priorities with regard to enforcement of protection orders; allows funding for training for criminal justice professionals on domestic violence and sexual assault of the elderly and individuals with disabilities; and strengthens legal advocacy services for victims of domestic violence.
- Prohibits states and tribes from requiring notification (to the perpetrator) of the registration of an out-of-state or tribal protection order; states that registration and/or filing cannot be a prerequisite for enforcing out-of-state or tribal orders of protection; and clarifies that tribal courts have full civil jurisdiction to enforce orders of protection.
- Establishes four new purposes for which VAWA funds may be used: (1) coordinated community responses; (2) sexual assault forensic medical personnel examiners training;
- (3) programs that assist criminal justice professionals in recognizing the needs and circumstances of older and disabled individuals who are victims of domestic violence and sexual assault; and (4) assistance to victims of domestic violence and sexual assault in immigration matters. Widens the definition of underserved populations.
- Reauthorizes the Rural Domestic Violence and Child Victimization Enforcement Grant Program and adds assistance to victims of domestic violence and child abuse in immigration matters.
- Reauthorizes the National Stalker and Domestic Violence Reduction grants to improve processes for entering data regarding stalking and domestic violence into local, state, and national crime information databases.
- Clarifies the elements of Interstate Domestic Violence and Stalking Offenses to improve effective prosecution of these crimes; expands the interstate stalking law to include interstate cyber stalking and entering or leaving Indian country for purposes of stalking.
- Reauthorizes Grants to Reduce Violent Crimes Against Women on Campus, clarifies that victim services organizations at public universities are covered, and adds "including assistance to victims in immigration matters" to one of the program's purpose areas.
- Authorizes the Attorney General to make grants to provide civil legal assistance for victims of domestic violence, stalking, and sexual assault; defines legal assistance to include family, immigration, administrative agency, housing, and protection orders; includes private nonprofits, Indian tribal governments, and law school clinics as eligible grantees; and requires grantees to certify that any person providing legal assistance has completed or will complete training that was developed with a domestic violence or sexual assault coalition or program.
- Reauthorizes the program for Shelter Services for Battered Women and Children.

- Creates a new grant program to be administered by the Department of Health and Human Services for transitional housing assistance for victims of domestic violence.
- Reauthorizes the National Domestic Violence Hotline.
- Requires certain federal agencies to conduct national studies and report to Congress on state laws regarding insurance discrimination against victims of violence against women; on workplace responses to domestic violence, sexual assault, and stalking; and on unemployment compensation for victims of violence against women.
- Creates a new Department of Justice grant program to provide training for law enforcement, prosecutors, and courts on elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault against older or disabled individuals.
- Creates a pilot program to make grants to states, units of local government, and Indian tribal governments to work with nonprofit entities to provide supervised visitation and safe visitation exchange of children in cases involving domestic violence, child abuse, sexual assault, or stalking.
- Reauthorizes the Court Appointed Special Advocate Program, the Child Abuse Training Programs for judicial personnel and practitioners, and the Grants for Televised Testimony.
- Requires a study and report to Congress on federal and state laws relating to child custody, including recommendations to reduce violence against women and sexual assault of children, and expands emergency jurisdiction under the Parental Kidnapping Prevention Act to include domestic violence cases.
- Reauthorizes and expands the grant program for Rape Prevention and Education at the Department of Health and Human Services.
- Creates a new Department of Justice grant program to make grants to provide education and technical assistance on domestic violence, stalking, and sexual assault on women with disabilities.
- Reauthorizes the Department of Health and Human Services program for Community Initiatives.
- Requires the Attorney General to develop a research agenda based on the recommendations contained in the National Academy of Sciences report "Understanding Violence Against Women" and to report to Congress on the agenda.
- Requires the Attorney General to evaluate existing standards and protocols and to develop and report to Congress on a national standard and protocol for sexual assault forensic examinations.
- Reauthorizes the State Justice Institute grants for training for state judges and court personnel and expands the training to include dating violence, domestic violence, and child sexual assault issues in custody and visitation cases.
- Requires the Attorney General, in consultation with national programs whose primary expertise is in domestic violence, to establish a task force to coordinate federal research on domestic violence.

Title V: New Protections for Battered Women makes numerous improvements that expand battered immigrants' access to immigration relief and removes abusers' ability to use immigration laws as a tool of control over immigrant victims:

- Allows a battered immigrant who was divorced from the abuser within the previous two years to file for VAWA relief provided that the divorce was connected to the abuse.
- Authorizes the Attorney General to waive certain barriers to battered immigrants' access to lawful permanent residence, including waivers for certain crimes of domestic violence and other crimes connected to the abuse.
- Clarifies that battered immigrants' use of public benefits specifically made available to VAWA self-petitioners under the welfare law does not make them ineligible for their green cards on the grounds that they are likely to become a public charge.
- Allows VAWA self-petitioners to adjust their status to lawful permanent resident in the United States rather than having to go abroad to do so.
- Creates a new nonimmigrant "U"-visa for victims of certain serious crimes, including domestic violence, sexual assault, stalking, and trafficking crimes, if the victim has suffered substantial physical or mental abuse as a result of the crime, if the victim has information about the crime, and if a law enforcement official or judge certifies that the victim is or is likely to be helpful in investigating or prosecuting the crime.

Division C: Aimee's Law. As an incentive for states to adopt stricter sentencing for murder, rape, or dangerous sexual offenses given the high rate of recidivism among sexual predators, Aimee's Law requires that in cases of repeat offenders of these crimes, the original convicting state pay the costs of prosecution and incarceration of the subsequent offenses (P.L. 106-386).

KRISTEN'S ACT OF 2000

Kristen's Act of 2000 designates funding to support agencies and not-for-profit groups that hunt for missing adults classified as "at risk or endangered." It establishes a national clearinghouse for missing adults similar to the National Center for Missing & Exploited Children (NCMEC) that would assist law enforcement and families in missing persons over the age of seventeen, when the cases have been determined by law enforcement to be "foul play" (P.L. 106-468).

PROTECTING SENIORS FROM FRAUD ACT OF 2000

The Protecting Seniors from Fraud Act of 2000 funds state Triad programs for five years through the National Association of Triads. It provides means to publicly disseminate information to educate senior citizens about fraudulent telemarketing and sweepstakes, and requires that statistics relating to crimes that target seniors, crime risk factors for seniors, and characteristics of seniors

who are victimized be included in the National Crime Victimization Survey (P.L. 106-534).

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT OF 2001

Title IV of the Air Transportation Safety and System Stabilization Act of 2001 establishes the September 11th Victim Compensation Fund of 2001 to address the economic and noneconomic losses of victims of this specific act of terrorism. The final rules that govern the September 11th Victim Compensation Fund of 2001 were published on March 6, 2002 (P.L. 107-42).

USA PATRIOT ACT OF 2001

The USA Patriot Act of 2001 addresses the needs and concerns of victims of terrorist acts, including immigrant victims of the attacks on September 11, 2001, and their families who have or had permanent resident status. The Act includes provisions that allow the Director of the Office for Victims of Crime to respond to airline hijacks; to address terrorism within and outside the United States; and to support the International Terrorism Compensation Program. The Act increases funding for training and technical assistance, authorizes use of discretionary funds for program evaluation and compliance efforts, authorizes the Director to use Crime Victim Funds for fellowships and clinical internships, and establishes an antiterrorism emergency reserve in the Victims of Crime Fund (P.L. 107-56).

VICTIMS OF TERRORISM TAX RELIEF ACT OF 2001

The Victims of Terrorism Tax Relief Act of 2001 exempts from income taxes any individual who dies as a result of wounds or injury incurred from the terrorist attacks against the United States on September 11, 2001. In addition, anyone who dies as a result of an illness involving anthrax between September 11, 2001, and January 1, 2002, is exempt. Other victim-related relief provisions of the Act include an exclusion from gross income of certain death benefits paid by an employer to a victim of such attacks, special lowered estate tax rates applicable to victims of such attacks, and tax exemptions for payments made to victims by charitable organizations as a result of such attacks (P.L. 107-134).

THE JUSTICE FOR ALL ACT OF 2004

The Justice for All Act of 2004 provides substantive rights for crime victims and mechanisms to enforce them. It also authorizes \$155 million in funding over the next five years for victim assistance programs at the federal and state level. The Debbie Smith Backlog Grant Program has been enacted through JFA providing funding to test the backlog of rape kits and other crime scene evidence in our nation's crime labs. It authorizes funding for programs to improve the capacity of crime labs to conduct DNA analysis, reduce backlogs, train examiners, and support sexual assault forensic examiner programs. It also includes the Kirk Bloodsworth Post-conviction DNA Testing Program that authorizes funding over

five years to assist states pay the costs of post-conviction DNA testing. (2005 NCVRW Resource guide)

Other Landmark Federal Legislation

- The Child Protection and Sexual Predator Punishment Act of 1998 seeks to improve protection for children from sexual predators and to prevent child sexual abuse. It prohibits the transfer of obscene material to minors and increases penalties for repeat offenders for offenses against children (P.L. 105-314).
- The Identity Theft and Assumption Deterrence Act of 1998 defines the crime of identity theft and outlines the penalties for those convicted in terms of number of victims, use of identification documents, value of losses, and connection to use of violence or drug trafficking (P.L. 105-318).
- The Higher Education Amendments of 1998 and The Jeanne Clery Act amend the Campus Security Act (P.L. 101-542) and the Campus Sexual Assault Victims' Bill of Rights to increase public reporting obligations to include victimization of students in off-campus housing and on public and private property located off-campus but adjacent thereto. Schools must report hate crimes by category of prejudice be it race, gender, religion, orientation, ethnicity, or disability according to the FBI's Hate Crime Data Collection Guidelines (20.U.S.C. 1092/34 CFR-668.46).
- The Crime Victims with Disabilities Awareness Act of 1998 directs the Attorney General to conduct a study on crimes against individuals with developmental disabilities. In addition, the Bureau of Justice Statistics must include statistics on the nature of crimes against individuals with developmental disabilities and victim characteristics in its annual National Crime Victimization Survey (P.L. 105-301).
- The Domestic Violence Provision of the National Defense Authorization Act of 2000 calls for the establishment of a Defense Task Force on Domestic Violence that would develop a strategic plan by which the Department of Defense could effectively address matters relating to domestic violence in the military (P.L. 106-65).
- The Hillary J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999 modifies the schedule of the Controlled Substances Act (CSA) to criminalize the manufacture, distribution, or possession of gamma butyrolactone (GBL), a "designer drug" associated with date rape and other forms of sexual assault among young adults (P.L. 106-172).
- The Child Abuse Prevention and Enforcement Act and Jennifer's Law of 2000 increases funds available for enforcement of child abuse and neglect laws; promotes programs for improved child abuse and neglect prevention; and authorizes grant awards to enable states to improve the reporting of unidentified and missing persons (P.L. 106-177).
- Title III, Section 47 (e), the Domestic Violence Discrimination Prohibition Section of the Financial Services Modernization Act that was enacted on

November 12, 1999, amends the Federal Deposit Insurance Act to prohibit banks that sell insurance from denying coverage, terminating coverage, or raising the premiums on coverage of clients who are victims of domestic violence (P.L. 106-102).

- The .08 Blood Alcohol Concentration Bill is an attachment to the Transportation Appropriations Bill (H.R. 4475) that requires states to adopt a 0.08 Blood Alcohol Content (BAC) as the legal limit for drunken-driving by 2004. Failure to pass the 0.08 BAC at the state level by 2004 will result in a two percent reduction in federal highway appropriations; failure to pass the 0.08 BAC by 2007 will result in an eight percent reduction (P.L. 106-346).
- The Strengthening Abuse and Neglect Courts Act of 2000 improves the administrative efficiency of abuse and neglect courts by funding state and local grants to reduce the backlog of cases, improve case tracking, and expand the Court-Appointed Special Advocates Program (P.L. 106-314).

The 1995 Attorney General Guidelines for Victim and Witness Assistance

As a result of the passage of the 1994 Violent Crime Control and Law Enforcement Act, the Attorney General revised and re-issued new comprehensive guidelines to establish procedures for the federal criminal justice system for implementing victim rights and assistance as enacted under federal law. In issuing the *1995 Attorney General Guidelines for Victim and Witness Assistance*, Attorney General Janet Reno stated:

Crime is a shattering experience that affects the lives of millions of Americans. It can destroy a person's sense of safety and security. Of paramount importance to crime victims and witnesses is their treatment by criminal justice personnel, who should care about their suffering, enforce their rights and protections, offer support to help them heal, and hold the criminal accountable for the harm caused . . .

The *Guidelines* reflect my strong belief that victims should play a central role in the criminal justice system and my commitment that all components of the United States Department of Justice shall respond to them with compassion, fairness, and respect, in accordance with the letter and spirit of the law (*AG Guidelines* 1995, Foreword).

In combining the requirements of the Victim and Witness Protection Act of 1982, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994, the *AG Guidelines* provide "definitive guidance on implementation of the 1990 and 1994 Acts as well as continued guidance on the protection of witnesses under the VVPA; and shall serve as a primary resource for Department of Justice (investigative, prosecutorial, and correctional) agencies

in the treatment and protection of victims and witnesses of federal crimes under these Acts."

FEDERAL CRIME VICTIMS' RIGHTS AND SERVICES:

SIGNIFICANT ELEMENTS OF THE 1995 ATTORNEY GENERAL GUIDELINES

As in the *1991 AG Guidelines*, the *1995 AG Guidelines* state that under 42 U.S.C. Section 10606(a), officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime *shall make their best efforts* to see that victims of crime are accorded the rights described under federal law. However, the new *AG Guidelines* increased the accountability of federal criminal justice officials. In the *1991 AG Guidelines*, the Attorney General *recommended* that the annual performance appraisals of federal law enforcement officers, investigators, prosecutors, and corrections officers include compliance with the *AG Guidelines*. The *1995 AG Guidelines* *direct* that *performance appraisals* and *reports of best efforts* include information on compliance with the *AG Guidelines*.

The *AG Guidelines* provide explicit designations of the individuals responsible for "identifying the victims and performing the services due victims and witnesses under federal law" and require that in each of the investigating field offices, correctional facilities, U.S. Attorney's office, and the Justice Department Litigation Division, "there must be one individual who shall be designated to specifically carry out victim-witness services." The sharing of information and cooperation among the various federal agencies, as well as interacting with tribal, state, and local agencies providing victim services, are also required by the *AG Guidelines*.

VICTIM AND WITNESS SERVICES

The *AG Guidelines* delineate a range of services that should be provided to victims and witnesses at each stage of the federal criminal justice process. Moreover, to further insure implementation, specific responsibility is assigned to federal agencies and officials to carry out these services. The services listed in the *AG Guidelines* include the following:

- Information and referral.
- Protection from intimidation and harassment.
- Consultation and notice.
- Secure waiting areas.
- Return of property held as evidence.
- Payment of forensic rape exam.
- Custodial release eligibility information.
- Notice and payment for testing and counseling for sexually transmitted diseases.
- Allocution and victim impact statements to the court.
- Restitution.

In addition, the *AG Guidelines* address other forms of assistance that shall be extended to all victims and witnesses to the fullest extent feasible, including victim privacy for child victims and victims of sexual assault, employer creditor intervention, parking, translator services, and related services.

REVISIONS TO THE AG GUIDELINES: 2000 EDITION

In October 1996, the Attorney General created the Deputy Attorney General's (DAG) Victims' Rights Working Group, and assigned to it the task of revising the 1995 version of the *AG Guidelines*. Major goals of the revision were to: (1) update the document with new federal laws pertaining to victims; (2) provide more explicit guidance to the field on "difficult issues" that had never been fully resolved by the Department of Justice; and (3) change the format of the document to make it easier to use.

In accordance with these goals and objectives, the *2000 AG Guidelines* incorporated a number of changes in both substance and format. These changes made the *AG Guidelines* easier to use and more comprehensible. With respect to format, separate sections were created specifically for the use of the investigative, prosecutive, and correctional personnel to which they applied. Statutory and rule citations were attached to the corresponding guidelines so that the user could refer directly to their text. Finally, a commentary section was added at certain points throughout the document in order to provide additional clarification, guidance, and practical suggestions on how to implement the law and policy that the document contained.

In the foreword to the *2000 Attorney General Guidelines for Victim and Witness Assistance*, Attorney General Janet Reno states that "The *Guidelines* reflect my strong belief that victims should play a central role in the criminal justice system and my commitment that all components of the United States Department of Justice respond to crime victims with compassion, fairness, and respect, in accordance with the letter and spirit of the law."

REVISIONS TO THE ATTORNEY GENERAL GUIDELINES 2005 EDITION

The AG Guidelines were revised in May 2005 to reflect the enactment of the *Justice for All Act of 2004*, 18 USC, 3771. The Act expanded and recodified the victims' bill of rights and gave victims standing to enforce those rights. The revised guidelines also include new guidance on assisting the victims of certain crimes, such as human trafficking and identity theft.

THE RIGHTS ESTABLISHED UNDER THE CRIME VICTIMS' RIGHTS ACT OF 2004

The Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771 provides that officers and employees of the Department of Justice shall make their best efforts to see that crime victims are notified of, and accorded, the following rights:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided by law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

The Act also requires prosecutors to advise victims that they can seek the advice of an attorney with respect to the rights established by the Act.

The Act also changed the definition of a crime victim as “a person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia.” The AGG defines a victim as one who “suffers direct physical, emotional, or pecuniary harm.”

Enforcement mechanisms for victims have been defined in the Act:

Judicial Enforcement-Crime victims, or the Government on their behalf, may move in Federal district court for an order enforcing their rights. (18 U.S.C., section 3771(c) (2))

Administrative Complaint- A crime victim may also file an administrative complaint if Department employees fail to respect the victim's rights. The Attorney General must take and “investigate complaints relating to the provision or violation of the rights of a crime victim” and provide for disciplinary sanctions for Department employees who “willfully or wantonly fail” to protect those rights. (18 U.S.C., section 3771 (f) (2)).

The 2005 AGG delineates responsibility for each component of the Federal Criminal Justice System, investigative, prosecution, and corrections. Services to victims and witnesses under the AGG are defined specifically for each component with a goal of comprehensive service provision throughout the complete justice process. Collaboration and cooperation across agency components is imperative.

Clarification in a number of areas is provided within the Guidelines to further define responsibilities and address complex issues such as;

- Restitution
- Child victims and child witnesses
- Domestic violence, sexual assault, or stalking
- Terrorism and other mass casualties
- Human trafficking,
- Identity theft

Coordination and Direct Services at the Federal Level

One significant result of the Victim and Witness Protection Act of 1982 was the creation of the position of Victim-Witness Coordinator in United States Attorneys' Offices to ensure compliance with the VWPA as well as with federal crime victim-related laws enacted since 1982. Today, every office of the United States Attorney across the country is authorized to employ a Victim-Witness Coordinator. Over the past ten years numerous federal law enforcement agencies have established their own programs to assist federal crime victims. Among the new initiatives, the FBI created a unit for victim-witness assistance staffed the unit with a Unit Chief and six supporting positions, and assigned Victim-Witness Coordinators in each of the fifty-six FBI field offices nationwide. The Department of Treasury has recently set about to further develop programs for each of its enforcement bureaus including the Bureau of Alcohol, Tobacco and Firearms, Secret Service, Customs Service, and Internal Revenue Service. The Federal Bureau of Prison has developed a program designed to notify victims and witnesses of the release of convicted federal offenders. Victim-witness programs are also being developed at the Department of State and Drug Enforcement Administration.

FEDERAL LAW ENFORCEMENT

Over seventy federal law enforcement agencies have first line responsibilities to victims of crime. Federal officers and agents are often the first to contact victims following a crime. Many enforcement agencies now require that their officers and agents provide victims with an information brochure highlighting their rights and outlining available services. Information about programs such as crime compensation and what to do if threatened or harassed is included. In addition, victim-witness coordinators assigned to each local office are responsible for follow-up assistance and referral.

Officers, Case Agents and Victim-Witness Coordinators provide victims with important case status information, advise of case closings, arrests and referral to the U.S. Attorney's Office. The following is a partial listing of federal law enforcement agencies that investigate crimes that are prosecuted in the federal court system:

- Immigration and Naturalization.
- Federal Bureau of Prisons.
- Federal Bureau of Investigation.
- U.S. Customs Service.
- Internal Revenue Service.
- U.S. Postal Inspection Service.
- U.S. Secret Service.
- Drug Enforcement Administration.
- Administrative Office of the U.S. Courts.
- U.S. Marshals Service.
- National Park Service.
- Bureau of Alcohol, Tobacco & Firearms.
- U.S. Capitol Police.
- U.S. Fish and Wildlife Service.
- General Services Administration/Federal Protective Service.
- U.S. Forest Service.

FEDERAL BUREAU OF INVESTIGATION VICTIM-WITNESS PROGRAM

A significant development in federal law enforcement agencies' response to crime victims was the FBI's efforts in 1996 to review and expand its entire victim-witness program. Among the new initiatives, the FBI implemented a comprehensive victim assistance program at the Headquarters level. As part of this new program, the FBI created a unit for victim-witness assistance staffed the unit with a unit chief and three supporting positions, and assigned victim-witness coordinators in each of the fifty-six FBI field offices nationwide.

In January 2002, the FBI established a new Office for Victim Assistance (OVA) at Federal Bureau of Investigation Headquarters. The mission of the OVA is to ensure that victims of crimes investigated by the FBI are afforded the opportunity to receive the services and notification as required by federal law and the Attorney General Guidelines on Victim and Witness Assistance (2005). The mission of the OVA includes enhancing the way the FBI responds to victims of terrorism and cyber crime.

The OVA is responsible for ensuring that all victims of crimes investigated by the FBI are identified, offered assistance, and have the opportunity to receive information about case events. The OVA manages the day-to-day operational aspects of the Victim Assistance Program in the 56 FBI field offices across the country as well as the FBI's international offices. In addition, the OVA is responsible for providing training and information that helps to equip FBI agents and other FBI personnel to work effectively with victims.

The OVA coordinates resources and services to victims in cases of terrorism and crimes against American citizens that occur outside the United States. When more than one U.S. Government agency is involved, the OVA works closely with

the appropriate federal agency to ensure that victims receive assistance.
(www.fbi.gov)

Victim Specialist Staff

In 2001, the FBI began hiring 112 full-time Victim Specialists to staff FBI divisions and field offices. The Victim Specialists are available to personally assist victims of federal crimes which are investigated by the division or field office where they work. The Victim Specialist is charged with ensuring that victims who choose to do so receive the opportunity to be notified of important case events and proceedings. In addition, the Victim Specialist can provide information about and referrals for a wide range of victim assistance services in his or her state and district. Some of these services include state crime victim compensation programs, rape crisis centers, homicide bereavement support groups, mental health counseling, and special services for child victims. (www.fbi.gov)

In addition, the OVA created a Terrorism Victim Assistance Program at FBI HQ to directly provide or coordinate information and assistance to victims of terrorism. In August 2004, the FBI Director designated the OVA to coordinate FBI compliance with the Aviation Disaster Family Assistance Act of 1996, when the cause of an aviation disaster is suspected or known to be criminal in nature. (OVA 2006)

FEDERAL PROSECUTION

One of the important roles of the Victim-Witness Coordinator with each US Attorney's Office is to implement federal laws regarding crime victims' rights' and services. The position can be structured in many different ways, depending on the size and configuration of the federal district and the needs of the United States Attorney. As the title implies, Victim-Witness Coordinators generally oversee and coordinate the victim assistance program and services in the United States Attorneys' Offices and work to establish procedures for victim and witness assistance across the entire office. Coordinators work with federal prosecutors and administrative staff to implement a wide range of victims' rights and services, including:

- Consultation with victims prior to plea negotiations.
- Courtroom orientation.
- Court escort.
- Collection of victim impact and restitution information.
- The processing of witness fees forms.
- Notifying victims/witnesses of continuances and delays.
- Referrals to state and local victim assistance and compensation programs.
- Coordination of travel and lodging for victims/witnesses.

An important aspect of the Victim-Witness Coordinator's job is to coordinate victim and witness service efforts with other federal as well as state and local law enforcement officials. Many cases cross jurisdictional lines and require out-of-

state resources to assist victims and to effectively prosecute the case. In addition, the networking activities of the Coordinators are helpful in providing services and support to victims who reside in rural-remote locations. In most jurisdictions, Coordinators work closely with state-level and local victim service providers and criminal justice officials, which serves to "fill gaps" in the delivery of services. Activities include cross-jurisdictional training, participating in statewide victim assistance coalitions, making victims service referrals, and participating in commemorative observances such as National Crime Victims' Rights Week and National Drunk and Drugged Driving Awareness Week.

The U.S. Attorney Victim-Witness Coordinator will play an even greater role in coordination in the future. As more agency law enforcement victim-witness coordinators are assigned, an increase in the development and expansion of the Victim-Witness Subcommittees of District's Law Enforcement Coordinating Committees (LECC) can be expected. The LECC brings together representatives from the federal, state, and local criminal justice system for planning, improving communication and coordination, and improving the overall response to crime.

SENTENCING IN FEDERAL COURTS AND THE USE OF VICTIM IMPACT STATEMENTS

In a landmark report sponsored by the Office for Victims of Crime entitled *Victim Impact Statements: A Victim's Right to Speak, A Nation's Responsibility to Listen*, the National Center for Victims of Crime (NCVC) in 1994 addressed victim impact in the federal system. The report stated the following:

Selection of an appropriate sentence is one of the most important decisions made in the criminal justice system. The primary vehicle used to assist the sentencing court in fulfilling this responsibility is the Presentence Investigation Report (PSI). In November 1987, the Sentencing Reform Act of 1984 became effective and radically changed the philosophical model for sentencing offenders in federal courts. Congress relinquished an indeterminate model of sentencing and adopted a determinate model based upon national guidelines. Changes in the content and format of the presentence report were necessary to accommodate the new sentencing process.

As part of the Crime Control Act of 1984, Congress created the U.S. Sentencing Commission to serve as an independent body of the judicial branch. The Commission was assigned responsibility for establishing sentencing policies and practices for the Federal criminal justice system in compliance with the Sentencing Reform Act of 1984. The Commission was further directed to produce guidelines that would avoid unwarranted sentencing disparities while retaining enough flexibility to permit individualized sentencing when called for by mitigating or aggravating circumstances. Sentencing Guidelines provide for upward departure of sentence based on intimidation or harassment against a victim or witness,

vulnerability of the victim, physical restraint of a victim and extreme psychological injury. Most recently additional upward departures have been provided for hate crime motivation and terrorism. If the court is to accurately determine mitigating or aggravating circumstances of each individual case, it must have access to all information pertinent to the case, and this information must include a careful review of victim impact.

The federal criminal justice system took the lead in setting a legal precedent for the inclusion of victim impact information in sentencing with the passage of the Victim and Witness Protection Act of 1982. The Act allows for the submission of victim impact information at the time of sentencing, amending the Federal Rules of Criminal Procedure (Rule 32(c) (1)) to require U.S. Probation officials to include the following victim impact information in their pre-sentence investigative reports to the court:

- Any harm--including financial, social, psychological and physical--done to or loss suffered by, any victim of the offense.
- Any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.

This created the right for federal victims to provide information on the impact of the crime in the sentencing phase of the federal justice system--commonly referred to as victim impact statements. The *1995 Attorney General Guidelines for Victim and Witness Assistance* address this right further by requiring the following:

- Federal prosecutors apprise victims that the U.S. Probation Officer is required to prepare a victim impact statement, which includes information relevant to restitution and how to communicate directly with the Probation Officer.
- Federal prosecutors shall also advise of or make available to the appropriate U.S. Probation Officer the information in the Federal Prosecutor's possession pertinent to the preparation of the victim impact statement so that the report will fully reflect the effects of the crime upon the victims as well as the appropriateness and amount of restitution.
- With respect to an oral impact statement, federal prosecutors shall also advise victims of violence or sexual abuse, or a designated victim representative, of their rights to address the court at sentencing and of the date, time, and place of the scheduled hearing.

Finally, consistent with available resources and their other responsibilities, federal prosecutors shall advocate the interests of victims, including child victims, at the time of sentencing.

Today, victim impact statements are widely used in criminal cases, including capital cases. Repeated challenges to the constitutionality of the use of victim

impact statements in capital cases was resolved when the U.S. Supreme Court in *Payne v. Tennessee* (U.S. 1991) upheld the constitutionality of victim impact statement evidence submitted during the sentencing phase in capital cases.

RESTITUTION

The Victims' Rights and Restitution Act of 1990 (part of the Crime Control Act) provides that victims of federal crime have a "right to restitution." It also requires that if a court does not order restitution, or orders only partial restitution, the court must state on the record the reasons why restitution was either not or only partially ordered. The 1990 Act also extended the court's ability to order restitution to victims of an offense involving a scheme, conspiracy, or pattern of criminal activity, i.e., all victims harmed by crimes of fraud. This extends not only to the victims of charged crimes, but to *all* the victims named in the indictment, even when the defendant was not charged on all counts.

In addition, the 1990 Act extended the right to restitution to all victims in plea agreements:

The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

The *AG Guidelines* underscore this right by stating that when plea negotiations occur, prosecutors should attempt to obtain the defendant's consent to an order of restitution for all victims of the offense, not just for the victims involved in the courts to which he or she pleaded guilty.

Departing from the previous trend to permit the court to have discretion in ordering restitution, the 1994 Crime Act states very clearly that conviction for four types of crimes must include mandatory restitution as part of an offender's punishment:

- Sex crimes.
- Sexual exploitation and other abuses of children.
- Telemarketing fraud.
- Domestic violence.

The Act also lists expenses for which victim restitution is required:

- Lost income.
- Necessary child care.
- Transportation.
- Other expenses related to participation in the investigation or prosecution of the offense.
- Attendance at proceedings related to the offense.

In addition, the 1994 Crime Act extended and strengthened the right to restitution for other federal crime victims by adding requirements for reimbursement of victims as well for the enforcement of restitution orders against delinquent defendants.

In 1996, the Mandatory Victim Restitution Act further expanded the scope of mandatory restitution to victims of violent crime, victims of certain property offenses, and victims of consumer product tampering.

Enforcement of restitution. To ensure enforcement of restitution orders, the Crime Act and *1995 AG Guidelines* specify that U.S. Attorneys must enforce the restitution order "by all available means."

The Crime Act provided several mechanisms to enforce restitution payments including the following:

- To reinforce the payment of restitution, the Crime Act requires that all benefits provided to the defendant by a federal agency must be immediately suspended until the defendant makes a "good faith" effort to pay restitution.
- The order may also be enforced by the victim in the same manner as a civil judgment.
- Compliance with a restitution order was established as a condition of probation or supervised release. The *AG Guidelines* specify that compliance with restitution orders *shall* be followed. If an offender fails to comply, the court, upon a hearing, may revoke the probation or term of supervised release, modify the terms and conditions of probation or release, or hold the offender in contempt.

Finally, the Crime Act reinforced restitution payments by amending the federal Bankruptcy Code to prevent defendants who owe restitution from discharging their liability for payments by filing bankruptcy. The Act states that a debt for restitution included as a sentence, on the debtor's conviction of a crime, would not be discharged in a Chapter 13 bankruptcy filing. The Act also added a new provision in the Bankruptcy Code that addresses drunk driving debts, stating that such debts are not dischargeable under Chapter 7, 11, and 12 proceedings.

FEDERAL BUREAU OF PRISONS VICTIM-WITNESS PROGRAM

In 1998, the Bureau of Prisons listed as one of their national goals and objectives to include victim-witness policies. Their objective was to develop and implement policies and programs designed to support and protect all rights and interests of crime victims-witnesses in the community and among correctional staff and their families and to provide information to victims and witnesses regarding the Bureau's programs and policies (Federal Bureau of Prisons 1998).

The mission of the U.S. Bureau of Prisons (BOP) is to "protect society by confining offenders in the controlled environment of prisons and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens" (Bureau of Prisons n.d.). Since 1984, the Bureau of Prisons has conducted the Victim/Witness Notification Program which provides procedures for responding to a request from a victim or witness who wishes to be notified regarding a specific inmate's release or release-related activities. Release-related activities about which a victim or witness can request and receive notification include the following:

Release. This would include the date of release, city and state of destination, and if applicable, the supervising U.S. Probation Office.

Escape. The victim or witness would be notified by telephone as soon as possible after the escape. Once the offender is apprehended, the victim or witness will be informed of the apprehension and the location of the offender.

Furlough. This notification includes any approval for an offender's unescorted trip to the community, including beginning and end dates, and destination.

Transfer to community corrections center. This information will include the name and location of the facility, the date of transfer, and the tentative date the inmate is scheduled for release from the center.

Parole hearings. Victims and witnesses are notified of hearings and may appear in person or provide a written statement to the U.S. Parole Commission.

Death. The victim or witness will be notified of the date of death, should such occur during the period of incarceration.

Currently, the Bureau of Prisons monitors 4,289 inmates in the Victim/Witness Notification Program, with more than 13,500 identified victims and witnesses. BOP has also developed a program of victim impact classes for offenders as well as the Inmate Financial Responsibility Program.

Office for Victims of Crime Response to Federal Crime Victims

The Federal Crime Victims Division was established by the Office for Victims of Crime to assist federal personnel in establishing and maintaining their programs for federal crime victims. This Division has responsibility for the following:

- Providing and improving services for federal crime victims.
- Monitoring compliance with the guidelines on "fair treatment of crime victims and witnesses" contained in the Victim and Witness Protection Act

of 1982, the Crime Control Act of 1990, and the Violent Crime and Law Enforcement Act of 1994.

- Providing training and technical assistance to federal criminal justice personnel and Native American organizations on victim assistance issues.
- Implementing the Children's Justice Act Program for Native Americans.

FEDERAL CRIME VICTIM ASSISTANCE FUND

In 1993, OVC established the Federal Crime Victim Assistance Fund (FCVA) to assist federal victims in need of immediate assistance that is unavailable through any other source. Since that time, OVC has set aside funds each year to aid victims of federal crime. These funds, administered by the Federal Crime Victims Division, are made available to U.S. Attorneys' Offices, FBI, Department of State, and DEA through Interagency Agreements. These funds have been used to provide crisis counseling, pay temporary shelter costs, cover travel for victims' participation in criminal justice proceedings, defray emergency medical treatment expenses, and hire interpreters for nonsubpoenaed victims.

FEDERAL CRIMINAL JUSTICE PERSONNEL TRAINING EFFORTS

The Federal Crime Victims Division provides federal criminal justice personnel with numerous training opportunities on effective intervention with federal crime victims. The training includes programs on handling cases and the development of victim-witness policies and procedures for federal criminal prosecutors, investigators, and Victim-Witness Coordinators. The Federal Crime Victims Division, in cooperation with the Federal Law Enforcement Training Center, FBI, Department of Defense, DEA, and other federal agencies, provides victim-witness training to over seventy different federal law enforcement agencies nationwide.

VICTIM SERVICES IN INDIAN COUNTRY

Victim Assistance in Indian Country Discretionary Grant Program. In 1996, OVC modified the Victim Assistance in Indian Country (VAIC) discretionary grant program to recognize tribal sovereignty and the government-to-government relationship between the federal government and Indian tribes. This change allows for directly funding tribes, instead of the past practice of funding states, which then made awards to tribes for establishing "on-reservation" victim assistance programs. During the transition to this new process, OVC provided direct funding in FY 1997 to all tribal programs at the FY 1996 levels. In FY 1998, six new programs were awarded grants through the competitive program. In FY 1999, OVC announced that all VAIC grants will be competitively awarded.

Activities that may be funded under the VAIC discretionary grant programs include:

- Victim advocate staff.
- Victim service volunteers.
- Crisis intervention.

- Twenty-four-hour crisis hotlines.
- Emergency transportation of victims.
- Emergency shelter.
- Mental health counseling.
- Court advocacy and accompaniment.
- Bilingual counseling services.

Overall, since 1988, OVC has provided over \$8.4 million in grants to establish thirty-two victim assistance programs in Indian country. Examples of some recently-funded programs include the first Native American Children's Advocacy Center and four Court-Appointed Special Advocate programs (CASA).

In 1996, the Attorney General launched the Indian Country Justice Initiative at the Pueblo of Laguna and the Northern Cheyenne Tribe. This initiative is a comprehensive approach to tribal criminal justice issues and a laboratory for promising practices that can be adapted in other areas of Indian Country (OVC 1997).

Children's Justice Act Partnerships for Indian Communities (CJA) Program.

OVC's Children's Justice Act Partnerships for Indian Communities (CJA) Program supports Indian communities in developing, establishing, and operating programs to improve the investigation, prosecution, and overall handling of child abuse cases, particularly cases of child sexual abuse, in a manner that increases support for and reduces trauma to child victims. The partnership projects are to address shortcomings in the tribal criminal justice system and to make systemic improvements in the overall response to serious child abuse and child sexual abuse cases on the reservation. OVC has committed funding support for three years, contingent upon the grantee's satisfactory performance and the availability of funds.

Significant Federal Initiatives

FEDERAL OUTREACH FOR VICTIMS OF CHILD EXPLOITATION

Federal law enforcement has stepped up its efforts to respond to child victims through multi-disciplinary responses. In 1995 the Attorney General established the Federal Agency Task Force for Missing and Exploited Children:

- Composed of representatives from fourteen federal agencies, the mission of the Task Force is to coordinate federal resources and services to effectively address the needs of missing, abducted, and exploited children.
- In addition to serving as an advocate and working to enhance services for missing and exploited children and their families, the Task Force has developed the publication *Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies*. The *Directory* provides information on the resources, technical assistance and support, and services that are available during the

- investigation of cases involving missing and exploited children (Federal Agency Task Force for Missing and Exploited Children 1996).
- The Child Abduction and Serial Killer Unit (CADKU) of the Federal Bureau of Investigation is a rapid response element of the FBI's Critical Incident Response Group. Following a request by a law enforcement agency, CADKU staff can provide operational assistance to federal, state, and local law enforcement agencies involved in the investigation of child abduction.
 - In May 1998, the Office of Juvenile Justice and Delinquency Prevention published *When Your Child is Missing: A Family Survival Guide*. The *Guide* was written by parents and family members who have experienced the disappearance of a child. It contains their combined advice concerning what you can expect when your child is missing, what you can do, and where to go for help.

SUPPORT FOR OKLAHOMA CITY BOMBING VICTIMS

Since the April 19, 1995, bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the victim assistance community on the local, state, and federal levels has provided tremendous support to the hundreds of victims and survivors. With support from OVC, the National Organization for Victim Assistance nine-member crisis response team arrived on the scene the day of the bombing. OVC worked closely with the United States Attorney's Office, the Office of Elementary and Secondary Education within the Department of Education, and the state of Oklahoma to provide emergency workers and services for the victims and survivors of the bombing.

An important change to the *Federal Rules of Criminal Procedure* was undertaken to allow closed circuit viewing of the trial by the victims and survivors:

"Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal proceedings in cases where the venue of the trial is changed--(1) out of the State in which the case was initially brought; and (2) more than 350 miles from the location in which those proceedings originally would have taken place, the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue" (42 U.S.C. 10608, Section 235).

As a result of the many cooperative efforts resulting from the aftermath of the Oklahoma City tragedy, the Office for Victims of Crime has undertaken cooperative initiatives with the American Red Cross, the Federal Emergency Management Agency, the Departments of Education and Health and Human Services, the Federal Bureau of Investigation, and the Executive Office for U.S. Attorneys to be prepared to respond to future large scale crises.

THE DEPUTY ATTORNEY GENERAL'S VICTIMS' RIGHTS WORKING GROUP

In 1996, the Attorney General established the *Deputy Attorney General's Victims Rights Working Group* to assist in bringing the entire Department into greater compliance with victims' rights legislation and the *Attorney General's Guidelines for Victim and Witness Assistance*. The Working Group is composed of high level policy representatives from the FBI, Drug Enforcement Agency, Immigration and Naturalization Service, Executive Office for U.S. Attorneys, Federal Bureau of Prisons, and all Department of Justice litigating divisions that handle criminal prosecutions. OVC is providing assistance to the Working Group.

The Victims' Rights Working Group was designed to:

- Monitor and facilitate agency components' respective efforts to fulfill their victims' rights obligations.
- Recommend policy to address operational and implementation problems.
- Review the revised *AG Guidelines*.
- Review victims' rights training curricula to ensure comprehensiveness and practical usefulness.
- Share "best practices" and expertise among agency components.
- Identify related resource allocation issues and obstacles to implementation and otherwise assist with implementation of victims' rights compliance throughout the Department.

Component heads were asked by the Attorney General to appoint a senior official in their office with the knowledge of the component's mission, specific responsibilities, and operations to participate in the Deputy Attorney General's Victims' Rights Working Group.

The first meeting of the Working Group was held on April 14, 1997. Representatives from every component with responsibilities to crime victims were present. The meeting was chaired by Acting Deputy Attorney General Seth Waxman, who directed each component to prepare a compliance with the *AG Guidelines*. Each component eventually submitted a plan which went into effect in October of 1997.

Since that time, the working group has met on a more or less bimonthly schedule. Deputy Attorney General Eric H. Holder, Jr., chaired a meeting in November of 1997. The working group is overseeing the *AG Guidelines* revision and working on finding solutions for other victims issues with the Department.

NATIONAL SYMPOSIUM ON VICTIMS OF FEDERAL CRIME

In 1997, the Office for Victims of Crime (OVC) sponsored the first National Symposium on Victims of Federal Crime. The symposium brought together for the first time over 800 professionals that serve crime victims from a number of federal agencies for a four-day training program that assisted federal criminal justice professionals in achieving the President's goal of holding the federal

system "to a higher standard of victims' rights than ever before." The second symposium, held in February 1999, with nearly 1,000 in attendance, focused on the federal response to acts of terrorism and mass casualty.

AUTOMATED NATIONWIDE VICTIM NOTIFICATION SYSTEM (VNS)

VNS is a cooperative effort between the Federal Bureau of Investigation (FBI), the United States Postal Inspection Service (USPIS), the United States Attorneys' offices, the Bureau of Prisons (BOP), and most recently, the DOJ Criminal Division. This free, computer-based system provides important *information* to victims. Victims who choose to participate receive letters or email notification generated through VNS containing information about the events pertaining to their case and/or any defendants in the case. This information is also available in English and Spanish on the Internet and through a toll-free telephone number (Call Center). <https://www.notify.usdoj.gov/index.jsp>

Participating Agencies

Investigation: FBI or USPIS

Depending upon which agency is investigating the crime, a Victim Specialist from the FBI or the USPIS will be the point of contact during the investigation stage of the case. Notifications which may be provided include the case status, arrest of a suspect, whether the case is declined for prosecution, or whether the case is being referred to state or local authorities.

The FBI prohibits the inclusion of terrorism investigations in the federal Victim Notification System for security reasons. The process of keeping victims informed is handled "off-line" and is tailored to each case. The provision of sensitive information is usually handled in person, or at least by telephone. Special briefing meetings are often held with victims and families. The FBI Office for Victim Assistance established a toll-free telephone line and a special email address for terrorism victims to use in contacting the Terrorism Victim Assistance Unit at FBI Headquarters. The OVA is expanding special Internet web pages for groups of terrorism victims.

Prosecution: United States Attorneys' Offices

Once criminal charges are filed by the U.S. Attorney's Office, a Victim-Witness Coordinator will maintain contact with the victim. Notifications which the U.S. Attorney's office may provide include the filing of charges, the scheduling of court proceedings, and the sentencing.

Incarceration: Bureau of Prisons

If a defendant is incarcerated at a federal prison, victims are able to receive information through the Federal Bureau of Prisons' Victim Notification program on

release-related activities including community corrections center placement, furlough, parole hearings, escape, and death.

- As of 7/31/2006, there are 1,241,380 victims in VNS.
- In Fiscal Year 2003, the first year VNS was in full operation, there were a total of 391,509 victims entered.
- In Fiscal Year 2004 there were 3.6 million events approved
- In Fiscal Year 2005 there were 6.5 million events approved
- In the first nine months of Fiscal Year 2006, in excess of 6.5 million events approved
- In March 2003, victims were afforded internet access to the system using a PIN and Password. (FBI OVA, 2006)

NATIONAL SEX OFFENDER REGISTRY ASSISTANCE PROGRAM

According to BJS, as a result of recent federal legislation, the establishment of an effective national sex offender registry that is capable of providing instant access to data on sex offender location on an interstate basis has become a national priority. The development of the National Registry for Sexual Offenders involves a coordinated effort between:

- The FBI, which will maintain and operate the registry.
- The National Law Enforcement Telecommunications System (NLETS), which will operate through states that will communicate registry information between and among themselves and the FBI.
- The states, which have primary responsibility for gathering data on sex offenders for use within the state and for input into the national system.

The permanent National Sex Offender Registry File will be developed as part of the FBI's NCIC--2000 project and will include a fingerprint and photo (mugshot) image of the registered sex offender. The permanent system is expected to be in place by July 1999. Pending the establishment of a permanent system, an interim national pointer system has been established by the FBI that flags criminal history records of persons identified by states as being registered as sex offenders.

As of March 1999, the FBI indicates that thirty-five states are providing data to the interim system and that an estimated 55,000 records are currently being flagged. However, all states operate some type of sex offender registry at this time. In order for the national system to permit law enforcement agencies in each state to have information on offenders initially released in other states, or traveling throughout the nation, individual state registries must be accurate, automated, and interfaced with the national system.

As a result, in March 1998 the Bureau of Justice Statistics (BJS) within the U.S. Department of Justice announced the establishment of the National Sex Offender Registry Assistance Program (NSOR-AP). The program is a component of the

BJS National Criminal History Improvement Program. It is designed to help states ensure that state sex offender registries identify, collect, and properly disseminate relevant information that is consistent, accurate, complete, and up-to-date.

Additionally, the program will help states establish appropriate interfaces with the FBI's national system so that state registry information on sex offenders can be tracked from one jurisdiction to another. The program will assist states in meeting the relevant requirements of current federal legislation including: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; Megan's Law; and the Pam Lychner Sexual Offender Tracking and Identification Act (42 U.S.C. 14071, 14072), as amended by Section 115 of the general provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary and related Appropriations Act of 1998, P.L. 105-119) and applicable state standards. The 1998 appropriation included \$25 million to support the national sex offender registry (BJS 1998).

Federal Justice Self-Examination

1. What four major federal laws have been enacted to provide rights, services, and funding for federal crime victims?
2. Describe the role of the federal Victim-Witness Coordinator and give an example of the type of interagency assistance Coordinators can provide.
3. Describe the three types of direct services available to victims of federal crime.
4. List two significant federal initiatives undertaken to assist victims of federal crime.